IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.R. No.2674 of 2006
Date of Decision:- 07.12.2006

Surinder Singh ....Petitioner

through
Mr.Hemant Bassi, Advocate

vs.

Madho Parshad and others ....Respondents

through
None.

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CORAM:-HON'BLE MR.JUSTICE SURYA KANT.

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SURYA KANT, J.

This revision petition is preferred against the orders dated 31.8.2002 and 1.4.2006 passed by the Rent Controller, Bhiwani and the Appellate Authority respectively, whereby the petitioner has been ordered to be evicted from the residential house which was rented out to his deceased father (Raghbir Singh).

The eviction was sought on two grounds, namely, (i) the petitioner has ceased to occupy the demised premises continuously for a period of four months; (ii) he owns a residential house in Bhiwani and, thus, is liable to be evicted from the demised premises.

Both the grounds have been concurrently accepted against the petitioner. It has been found as a matter of fact that after the death of the father of the petitioner on 16.5.1994, the premises has remained unoccupied as the petitioner, who is a textile engineer, is settled in U.S.A.

The petitioner himself has admitted in his deposition that the premises is occupied by his servant to whom he is paying Rs.600/- per month though the monthly rent of the premises is Rs.50/- only.

Similarly, the Courts below have held that house No.Y-1617 which was named by the petitioner as 'Ravindra House', was owned by him. The said house was constructed in the year 1977-78 and had two independent portions. While one portion was occupied by the younger sister of the petitioner, the other portion remained vacant till the said house was disposed of by the petitioner after filing of the present eviction petition i.e. in March/April, 2000. The petitioner admitted the fact that the area of house No.Y-1617 was much more than the area of the premises in dispute.

Various contentions have been raised by learned counsel for the petitioner in support of this revision petition. Firstly, it is contended that at the time when the ejectment petition was filed, the ground under Section 13 Sub-section 2 (v) of the Haryana Urban (Control of Rent & Eviction) Act, 1973 was not available to the respondents as the father of the petitioner expired on 16.5.1994 whereas the ejectment petition was filed on 3.8.1994 i.e. before expiry of the period of four months from the date of death of his father. I, however, do not find any merit in this contention. Firstly, no such plea was raised by the petitioner before the Appellate Authority. Secondly, it is his own case that the petitioner has been living in U.S.A. since 1970. Out of his two sisters, the younger sisiter is also settled in U.S.A. His elder sister who is unfortunately a widow, is settled in Jaipur and is living with her son. There was, thus, none to occupy or to continue being in possession of the premises in dispute after the death of the father of the petitioner on 16.5.1994. No evidence has been led by the petitioner to

establish that his father was actually living in the premises in dispute till he died.

It is then contended that the ejectment petition has been filed against the petitioner alone whereas after the death of their father, his two sisters also inherited the tenancy and they too are to be treated as tenants in terms of Section 2(h) read with Schedule attached to the Act.

In my view the aforesaid contention is also legally misconceived.

Section 2 (h) of the Act defines "tenant" which means as follows:-

> " "tenant" means any person by whom or on whose account rent is payable for a building or rented land and includes a tenant continuing in possession after the termination of his tenancy and in the event of such person's death, <u>such of his heirs as are mentioned in the Schedule appended to this Act and who were ordinarily residing with him at the time of his death</u>, but does not include a person placed in occupation of a building or rented land by its tenant, except with the written consent of the landlord, or person to whom the collection of rent or fees in a public market, cart-stand or slaughter-house or of rents for shops has been framed out, or leased by a municipal, town or notified area committee;"
>
> (emphasis applied)

On a plain reading of the aforesaid provision, it is apparent that in the event of death of a tenant, only such of his heirs as are mentioned in the Schedule appended to the Act and <u>who were ordinarily residing with</u>

him at the time of his death, shall inherit the tenancy.

Both the Courts have concurrently held that the sisters of the petitioner were married during the life time of their father and are settled in U.S.A. and Jaipur respectively for a long period. No evidence whatsoever has been led by the petitioner to show that anyone of them was ordinarily residing with his father at the time of his death. In this view of the matter, the Courts below have rightly held that notwithstanding the fact that the sisters of the petitioner fall in the Schedule, they did not acquire tenancy.

Learned counsel for the petitioner also contends that the ejectment petition has not been filed by the Trust from whom the premises was taken on rent. It is argued that the respondents, though have claimed themselves to be the Trustees, yet they have failed to produce the constitution of the Trust to prove their plea.

I do not find any substance in the aforementioned contention as well. The ejectment petition was filed by the five trustees and some of them had been accepted as trustees of Seth Kirori Mal Charity Trust by the father of the petitioner himself in previous rounds of litigation including Civil Revision No.3562 of 1991 decided on 26.10.2004. As regard to the two trustees, namely, Raja Ram and Kali Charan, both the Courts have found as a matter of fact that due to resignation by some of the Trustees, these two were nominated.

Be that as it may, while deciding issue Nos.1 and 4 to 6, it has been held by the Courts below that the petitioner has been paying rent to the respondents and thus, relationship of landlord and tenant between them stands established.

In this view of the matter, no exception can be made to the

findings returned by the Courts below under issue Nos.4 to 6 as well.

From the above resume of facts, it may be noticed that the demised premises belongs to a charitable trust and it was rented out to the father of the petitioner at a monthly rent of Rs.50/-. The petitioner, who is a well-settled textile Engineer and also used to own a big bungalow in the Urban Estate of Bhiwani, does not require the premises for his personal use and occupation.

Faced with this situation, learned counsel for the petitioner states that the petitioner is ready and willing for suitable enhancement in the monthly rent and/or alternatively, to purchase the premises if the respondents agree to.

The above-stated proposal put forth by the petitioner being beyond the scope of these proceedings cannot be entertained. Consequently and for the reasons aforestated, I do not find any merit in this revision petition which is accordingly dismissed.

December 07, 2006 **(SURYA KANT)**
poonam **JUDGE**